

CENTER FOR DISABILITY ACCESS  
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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**Brian Whitaker,**  
Plaintiff,

v.

**LR 808 Olive-1 LLC**, a Delaware  
Limited Liability Company;  
**LR 808 Olive-2 LLC**, a Delaware  
Limited Liability Company;  
**Shake Shack California LLC**, a  
Delaware Limited Liability  
Company; and Does 1-10,

Defendants.

**Case No.**

**Complaint For Damages And  
Injunctive Relief For Violations  
Of: American's With Disabilities  
Act; Unruh Civil Rights Act**

Plaintiff Brian Whitaker complains of Defendants LR 808 Olive-1 LLC, a Delaware Limited Liability Company; LR 808 Olive-2 LLC, a Delaware Limited Liability Company; Shake Shack California LLC, a Delaware Limited Liability Company; and Does 1-10 ("Defendants"), and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. He is substantially limited in his ability to walk. He is a quadriplegic. He suffers from

1 a C-4 spinal cord injury and uses a wheelchair for mobility.

2 2. Defendants LR 808 Olive-1 LLC and LR 808 Olive-2 LLC owned the  
3 real property located at or about 400 W. 8<sup>th</sup> Street Los Angeles, California, in  
4 July 2018.

5 3. Defendants LR 808 Olive-1 LLC and LR 808 Olive-2 LLC owns the real  
6 property located at or about 400 W. 8<sup>th</sup> Street Los Angeles, California,  
7 currently.

8 4. Defendant Shake Shack California LLC owned Shake Shack located at  
9 or about 400 W. 8<sup>th</sup> Street Los Angeles, California, in July 2018.

10 5. Defendant Shake Shack California LLC owns Shake Shack  
11 ("Restaurant") located at or about 400 W. 8<sup>th</sup> Street Los Angeles, California,  
12 currently.

13 6. Plaintiff does not know the true names of Defendants, their business  
14 capacities, their ownership connection to the property and business, or their  
15 relative responsibilities in causing the access violations herein complained of,  
16 and alleges a joint venture and common enterprise by all such Defendants.  
17 Plaintiff is informed and believes that each of the Defendants herein,  
18 including Does 1 through 10, inclusive, is responsible in some capacity for the  
19 events herein alleged, or is a necessary party for obtaining appropriate relief.  
20 Plaintiff will seek leave to amend when the true names, capacities,  
21 connections, and responsibilities of the Defendants and Does 1 through 10,  
22 inclusive, are ascertained.

23  
24 **JURISDICTION & VENUE:**

25 7. The Court has subject matter jurisdiction over the action pursuant to 28  
26 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
27 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

28 8. Pursuant to supplemental jurisdiction, an attendant and related cause

1 of action, arising from the same nucleus of operative facts and arising out of  
2 the same transactions, is also brought under California's Unruh Civil Rights  
3 Act, which act expressly incorporates the Americans with Disabilities Act.

4 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is  
5 founded on the fact that the real property which is the subject of this action is  
6 located in this district and that Plaintiff's cause of action arose in this district.

7  
8 **FACTUAL ALLEGATIONS:**

9 10. Plaintiff went to the Restaurant in July 2018 to eat.

10 11. The Restaurant is a facility open to the public, a place of public  
11 accommodation, and a business establishment.

12 12. Transaction counters are also one of the facilities, privileges, and  
13 advantages offered by Defendants to patrons of the Restaurant.

14 13. On the day of plaintiff's visit, there was no accessible transaction  
15 counter for use by persons with disabilities.

16 14. Defendants placed promotional materials in front of the transaction  
17 counter, which created a 48 inch high barrier for plaintiff. As a result, plaintiff  
18 must necessarily had to reach up and conduct his transaction at 48 inches in  
19 height on the day of his visit.

20 15. Currently, the promotional materials in front of the transaction counter,  
21 creating a 48 inch high barrier for plaintiff.

22 16. Point-of-sale machines at the cashier counter are another one of the  
23 facilities, privileges, and advantages offered by Defendants to patrons of the  
24 Restaurant.

25 17. The point-of-sale machines, consisting of a card reader, keypad, and  
26 screen were placed on top of the transaction counter.

27 18. The point-of-sale machines were located higher than allowed by law. In  
28 fact, the card reader is 57 inches high.

1 19. The point-of-sale machines were not readily visible to and useable by  
2 wheelchair users.

3 20. Currently, the point-of-sale machines, consisting of a card reader,  
4 keypad, and screen are placed on top of the transaction counter.

5 21. Currently, the point-of-sale machines are located higher than allowed  
6 by law.

7 22. Currently, the point-of-sale machines are not readily visible to and  
8 useable by wheelchair users.

9 23. Plaintiff personally encountered these barriers.

10 24. This inaccessible facility denied the plaintiff full and equal access and  
11 caused him difficulty, discomfort, and embarrassment.

12 25. Plaintiff plans to return and patronize the Restaurant but is deterred  
13 from visiting until the defendants remove the barriers.

14 26. The defendants have failed to maintain in working and useable  
15 conditions those features required to provide ready access to persons with  
16 disabilities.

17 27. The barriers identified above are easily removed without much  
18 difficulty or expense. They are the types of barriers identified by the  
19 Department of Justice as presumably readily achievable to remove and, in fact,  
20 these barriers are readily achievable to remove. Moreover, there are numerous  
21 alternative accommodations that could be made to provide a greater level of  
22 access if complete removal were not achievable.

23 28. Plaintiff is deterred from returning and patronizing the Restaurant  
24 because of his knowledge of the barriers that exist. Plaintiff will, nonetheless,  
25 return to assess ongoing compliance with the ADA and will return to patronize  
26 the Restaurant as a customer once the barriers are removed.

27 29. Given the obvious and blatant nature of the barriers and violations  
28 alleged herein, the plaintiff alleges, on information and belief, that there are

1 other violations and barriers on the site that relate to his disability. Plaintiff will  
 2 amend the Complaint to provide proper notice regarding the scope of this  
 3 lawsuit once he conducts a site inspection. However, please be on notice that  
 4 the plaintiff seeks to have all barriers related to his disability remedied. See  
 5 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff  
 6 encounters one barrier at a site, he can sue to have all barriers that relate to his  
 7 disability removed regardless of whether he personally encountered them).

8  
 9 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**  
 10 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all  
 11 Defendants.) (42 U.S.C. section 12101, et seq.)

12 30. Plaintiff re-pleads and incorporates by reference, as if fully set forth  
 13 again herein, the allegations contained in all prior paragraphs of this  
 14 complaint.

15 31. Under the ADA, it is an act of discrimination to fail to ensure that the  
 16 privileges, advantages, accommodations, facilities, goods and services of any  
 17 place of public accommodation is offered on a full and equal basis by anyone  
 18 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.  
 19 § 12182(a). Discrimination is defined, inter alia, as follows:

- 20 a. A failure to make reasonable modifications in policies, practices,  
 21 or procedures, when such modifications are necessary to afford  
 22 goods, services, facilities, privileges, advantages, or  
 23 accommodations to individuals with disabilities, unless the  
 24 accommodation would work a fundamental alteration of those  
 25 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 26 b. A failure to remove architectural barriers where such removal is  
 27 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
 28 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,

Appendix "D."

- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities. 42 U.S.C. § 12183(a)(2).

32. In areas used for transactions where counters have cash registers and are provided for sales or distribution of goods or services to the public, at least one of each type shall have a portion of the counter which is at least 36 inches in length with a maximum height of 36 inches above the floor. 1991 Standards § 7.2(1). Under the 2010 Standards, where the approach to the sales or service counter is a parallel approach, such as in this case, there must be a portion of the sales counter that is no higher than 36 inches above the floor and 36 inches in width and must extend the same depth as the rest of the sales or service counter top. 2010 Standards § 904.4 & 904.4.1.

33. Here, no such accessible counter has been provided, in violation of the ADA.

34. In stores and other retail outlets with point-of-sale machines located at individual check stands, or sales or service counters must be made accessible. If the point of sale machine is vertically mounted, defined as no more than 30 degrees away from the viewer, then it can be as high as 52 inches in height. (707.7.1.1). If the point of sale machine is angle mounted, defined as between 30-60 degrees away from the viewer, then it can be as high as 44 inches in height. (707.7.1.2).

35. Here, the point of sale machine exceeded all height allowances. This is

1 a violation of the law.

2 36. A public accommodation must maintain in operable working condition  
3 those features of its facilities and equipment that are required to be readily  
4 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

5 37. Here, the failure to ensure that the accessible facilities were available  
6 and ready to be used by the plaintiff is a violation of the law.

7 38. Given its location and options, plaintiff will continue to desire to  
8 patronize the Restaurant but he has been and will continue to be discriminated  
9 against due to the lack of accessible facilities and, therefore, seeks injunctive  
10 relief to remove the barriers.

11  
12 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**  
13 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
14 Code § 51-53.)

15 39. Plaintiff repleads and incorporates by reference, as if fully set forth  
16 again herein, the allegations contained in all prior paragraphs of this  
17 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,  
18 that persons with disabilities are entitled to full and equal accommodations,  
19 advantages, facilities, privileges, or services in all business establishment of  
20 every kind whatsoever within the jurisdiction of the State of California. Cal.  
21 Civ. Code §51(b).

22 40. The Unruh Act provides that a violation of the ADA is a violation of the  
23 Unruh Act. Cal. Civ. Code, § 51(f).

24 41. Defendants’ acts and omissions, as herein alleged, have violated the  
25 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s  
26 rights to full and equal use of the accommodations, advantages, facilities,  
27 privileges, or services offered.

28 42. Because the violation of the Unruh Civil Rights Act resulted in difficulty,

1 discomfort or embarrassment for the plaintiff, the defendants are also each  
2 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-  
3 (c).)

4  
5 **PRAYER:**

6 Wherefore, Plaintiff prays that this Court award damages and provide  
7 relief as follows:

8 1. For injunctive relief, compelling Defendants to comply with the  
9 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
10 plaintiff is not invoking section 55 of the California Civil Code and is not  
11 seeking injunctive relief under the Disabled Persons Act at all.

12 2. Damages under the Unruh Civil Rights Act, which provides for actual  
13 damages and a statutory minimum of \$4,000.

14 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant  
15 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

16  
17 Dated: July 26, 2018

CENTER FOR DISABILITY ACCESS

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19  
20 By: \_\_\_\_\_

21 Chris Carson, Esq.  
22 Attorney for plaintiff  
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